

**SOCIAL SECURITY**  
**ADVISORY COMMITTEE**

**Decision Making and Mandatory  
Reconsideration**

**A study by the Social Security Advisory Committee**

**Executive Summary**

**July 2016**

## Executive Summary

Social security payments are the outcome of a lengthy process that begins with policy development followed by legislation providing the basis for government action. This report examines the on-the-ground actions taken to determine benefit entitlement by government officials in the Department for Work and Pensions (DWP) and HM Revenue and Customs (HMRC). We refer to all such officials as Decision Makers (DMs).

DMs need adequate skills, guidance and training to carry out this role effectively, accurately interpreting complex laws and making decisions based on appropriate evidence. Millions of decisions are made by DWP and HMRC every year, all of which are of great importance to those affected. However, DMs do not always get this right and the consequences can be significant for both the individual and the Exchequer. Recent reform of the appeals process, in particular the introduction of a Mandatory Reconsideration (MR) before appeal, have set out to resolve more disputes earlier and reduce unnecessary demand on the Tribunals Service. However there are questions about how successful this process has been. This study seeks to understand decision making in more detail, with a focus on MR.

This report concentrates on Employment & Support Allowance (ESA) fitness for work decisions and Tax Credits. The project has involved a review of research evidence, statistical analysis, site visits and discussion groups with staff at DWP and HMRC and analysis of over 80 consultation responses from SSAC's stakeholders.

### *Difficulties Assessing Departmental Performance*

Decision-making is a pertinent issue currently because of the scale of on-going welfare reform, removal of legal aid, reduced funding for welfare rights agencies, the winding up of relevant oversight bodies and recent reform of the appeals process.

Tribunal overturn rates are a key measure for understanding the accuracy of decisions. However there are some limitations to their use: tribunal decisions reflect only a small proportion of decisions made, people may not dispute decisions that are in their favour even if not correct, there may not be an objectively 'correct' decision in finely balanced cases and expert tribunals are arguably better placed to make higher quality decisions.

Cogent oral (and documentary) evidence are the most common reasons for decisions being overturned, with one in four tribunals reaching a different conclusion to DWP on substantially the same facts. This suggests the greatest challenge is improving initial evidence-gathering.

Measures of fraud and error provide insights into payment accuracy across the system but do not currently include those incorrectly denied benefit.

## ***Mandatory Reconsideration***

### *The impact on appeals*

Appeals have declined with the introduction of MR, but with no fall for benefits not subject to MR. However, some of the fall might be attributed to claimants being deterred from bringing an appeal although we cannot know what would have happened in the absence of MR being introduced.

Stakeholders reported that claimants find the appeals system overly complex, chiming with DWP's own research this year. **The Department(s) should identify and address elements within the appeals process that claimants find complex.**

### *Requesting an MR*

Current time limits for requesting an MR are sometimes too short for claimants to seek advice and gather evidence. **Current MR time limits should be reviewed.** Stakeholders identified that, for HMRC disputes in particular, the formal requirement to request an MR within one month (30 days at HMRC) needs to be made clearer. **A better communication strategy by HMRC and DWP that emphasises the need for timely requests for MR should be developed.**

There is inconsistency between DWP and HMRC in how MRs can be requested and not all these methods are publicised. There were particular difficulties in dealing with DWP by telephone. **The MR process should be aligned and fully publicised across departments.**

### *Examining MR Outcomes and Processes*

Data on MR are limited. **We recommend that government prioritises developing full and robust statistics on MR success rates and waiting times at DWP and HMRC.** Recent streamlining of the evidence gathering process may not have improved effective reconsideration.

### *Evidence Gathering Phone Calls for ESA*

Stakeholders reported that DM phone calls were overly scripted and did not advise claimants on what further evidence might help their case. Speaking directly to claimants, as opposed to their representatives, may not always be best, particularly where claimants lack the capacity to respond effectively and where unscheduled calls can cause distress.

### *Consideration of Evidence by DMs*

Stakeholders were concerned that evidence provided in some cases was not being considered, as there would often be no reference to this evidence in

subsequent communications. If welfare rights advisers do not believe evidence submitted is being used, there is a risk they will advise claimants not to take the effort to send it to DWP, undermining the process.

### *Mandatory Reconsideration Notices (MRNs)*

MRNs are letters notifying claimants that an MR has been completed and is required for onwards appeal. These were not always clearly labelled as MRNs, causing confusion for claimants and those working at Her Majesty's Courts and Tribunals Service (HMCTS) trying to establish if an MR had been conducted. MRNs were not always expressed in plain English and reference to appeal rights were placed at the back of the letter – which caused some claimants to believe no further steps could be taken. **We recommend that all MRNs should be labelled clearly, explaining the decision and what it means for claimants, in plain English. Onward appeal rights should be signposted and reasons for the decision presented in table form, with a row for each descriptor, in ESA and Personal Independence Payment (PIP) cases, to make it easier for claimants to understand the decision.**

### *Role of Concentrix*

Concentrix is a private company contracted on a 'payments by results' basis by HMRC to carry out compliance checks for Tax Credit claims. Concentrix therefore may have a financial incentive not to overturn decisions at MR, in order to avoid a loss of revenue. The terms of the contract raise a question as to whether it is appropriate for the same organisation to both make the original decision and then be responsible for its reconsideration if required. **We recommend that the National Audit Office should examine the Concentrix contract to ensure that at the same time as providing value for money, Concentrix has appropriate safeguards to preserve justice for the claimant.**

### *Mandatory Reconsideration in ESA*

Claimants felt that making a claim to JSA was potentially fraudulent as they had to make a statement that they were fit for work; that claiming JSA might prejudice their ESA claim; and that their JSA conditionality would not be adequately flexed, resulting in a risk of sanction. Claimants may therefore not claim at all because they do not feel they have a choice, resulting in hardship.

Given that the government has taken a firm stance on not continuing payment of ESA during the MR process, our recommendations focus on making this transition successful for claimants. **DWP should: provide better information and advice for claimants in this situation, in particular around JSA eligibility; provide reassurances that making a claim will not count against their appeal and reassurance that job search requirements are subject to reasonable adjustments based on health problems.**

Furthermore, where Work Coaches believe that an individual is too unwell to search for work, **there could be wider usage of existing JSA sickness provisions.**

Stakeholders also told us that the re-instatement of ESA after the appeal was lodged was sometimes delayed by several weeks. **The government should consider ways to streamline this process of repayment so that claimants do not go without payment for longer than is necessary.**

### *Improving Decision Making Standards*

#### *Training, Guidance and Organisational Learning*

Speaking to DMs, we heard that training had improved and become more clearly structured, but that it was not fully comprehensive not always relevant to the job at hand. More training was desired on decision making generally, for example on the need to weigh up evidence. Learning on the job was felt to be important, as was the role of mentoring. **All training should be reviewed for relevance and to ensure it is fit for purpose in carrying out the work of a DM, working directly with DMs to understand their needs.**

Written guidance was felt to be accurate and reliable but difficult to navigate, and the search facility unreliable. **Guidance should become easier to navigate, with an improved search function and an index.**

Feedback loops are important (e.g. the Quality Assurance Framework, feedback for first-tier DMs by those conducting MR when their decisions are changed and the use of tribunal feedback). DWP could learn from the inquisitorial approach taken by tribunal panels, which could inform DM training and the design of better forms to gather evidence. We welcome the DWP pilot to collect and analyse tribunal feedback and **recommend greater transparency about how this feedback is being used to improve decision making.** We note that individual DMs were not routinely notified when their decisions were overturned and there was no understanding of performance in relation to tribunal decisions at DWP or HMRC. **This should be rectified.**

Finally we highlight the lack of independent oversight in the decision making process beyond the backstop of tribunals and **ask the Government to consider aspects of the decision making process that could benefit from external oversight and how best this can be carried out.**

#### *The role of evidence*

We consider the role of evidence in decision making, particularly with respect to ESA. Medical reports produced by Healthcare Professionals (HCP) were thought to be too heavily relied upon in the decision making process by stakeholders and there is a need to explore contradictions in the evidence

more thoroughly. Given the importance of the HCP report in determining claims, **claimants should have routine access to their medical reports so they can understand the basis on which decisions are made.**

Claimants sometimes have difficulty obtaining evidence from their medical professionals and this picture varies tremendously across the country, according to research by Citizens Advice. We recommend **that DWP work with the Department of Health and the devolved administrations to establish a consistent approach to the provision of medical evidence, greater awareness within the medical profession about the benefit system, forms designed to capture the data required from doctors to determine eligibility and 'site visits' by HCPs should be re-introduced.**

### *The role of communications*

Welfare support workers frequently raised the inconsistent manner in which advisors were copied into written communications, despite requests for the department(s) to do so. **We recommend that correspondence should always be copied to any advisors supporting the claimant, providing claimants have given consent.**

Stakeholders told us of delays in answering telephone calls, deterring claimants from following up disputes or seeking updates. Likewise, DMs had issues with claimants not answering. Calls are typically from withheld numbers with no option for the claimant or their representative to call the DM back if a call is missed. **The Department(s) should explore the feasibility of calling from numbers that are not withheld.**

E-mail could have advantages and **DWP/HMRC should seek to identify and resolve barriers to further use of secure e-mail in dispute resolution.** We are pleased to note that HMRC are rolling out a secure web-chat service and **recommend that the learning from this is shared with DWP to inform development of its own web chat service.**

### *Conclusion*

Properly conducted, MR could be an efficient process to improve dispute resolution, benefiting all involved. However much evidence suggests it does not work as well as it should and we have made recommendations to improve the process, allowing the policy intent to be fully realised. High quality decisions in the first instance would reduce the need for MR and we have explored a range of ways initial decision making could be improved, including better claimant communication, more effective use of evidence, enhanced organisational learning both within and across government departments and the sharing of best practice. We ask that the government carefully consider our recommendations which we believe will enhance decision making and deliver savings to the Exchequer.